

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of : Robert G. Wilhelm, *et al.*  
Application No. : 09/876,915  
Filed : June 8, 2001  
For : Systems and Methods for Adaptive Sampling and  
Estimating a Systematic Relationship Between a Plurality  
of Points  
Examiner : Gregory M. Desire  
Art Unit : 2624  
Atty. Docket : 2000-008-9/14

Mail Stop: Patent Ext.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Petition Regarding Patent Term Adjustment (PTA)**  
**Indicated in Notice of Allowance**

Sir:

1. A Notice of Allowance was mailed on December 1, 2009 for the present application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment Under 35 USC § 154(b) that indicated that the total patent term adjustment (PTA) to date is 2226 days. It is believed that the correct total PTA is 2575 days.

2. The determination of the total PTA of 2226 days is erroneous because the U.S. Patent & Trademark Office's (PTO) PTA calculator failed to account for two separate PTO delays. The two PTO delay periods should be added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008) *aff'd Wyeth et al. v. Kappos*, No. 2009-1120 (Fed. Cir. Jan 7, 2010). The number of PTA credits of 2226 days for PTO delay under 35 USC § 154(b)(1)(A) and 37 CFR § 1.702(a)(1) that is shown on the PTA History (Exhibit A) is correct and agrees with the credit calculated by the PTO. However, this delay only accounts for one of the

delays of the PTO. The other delay warrants a PTA credit of 2210 days for PTO delay under 35 USC § 154(b)(1)(B) and 37 CFR § 1.702(b). These two periods of delay overlap; therefore, the total credit for PTO delay should be reduced by the number of days of that overlap, 1585 days. Accordingly, a total PTA credit of 2881 days (i.e., 2256 days + 2210 days – 1585 days) is appropriate based upon the PTO delay. Additionally, the total PTA of 2226 is erroneous because the total number of PTA debits of 30 days for applicant delay that is shown on the Patent Term Adjustment History (Exhibit A) is incorrect. In addition to the 30 day delay, there should be an additional debit of 276 days for Applicant's failure to file a petition to withdraw the holding of abandonment within two months of the mailing of the Notice of Abandonment. Accordingly, the total debit for applicant delay should be 306 days (i.e., 30 days + 276 days). Thus, the correct total PTA to date is 2575 days (i.e. 2881 days of PTA credit – 306 days of Applicant delay).

3. Thus, Applicant believes that the total PTA credit for PTO delay is 2881 days, the total PTA debit for applicant delay is 306 days, and the correct total PTA under 37 CFR § 1.703(f) is 2575 days.

4. In accordance with 37 CFR § 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of mailing of the notice of allowance.

5. The following statements are required by 37 CFR § 1.705(b)(2)(i).
  - i) The correct total PTA credit is 2881 days.
  - ii) The basis for the 2256 days of PTA credit is under § 1.702(a)(1) and is due to the PTO's failure to mail a notification under 35 USC § 132 or a notice of allowance within 14 months of the application's filing date, and the PTO's failure to respond to a reply under 35 USC 132 no later than four months after the date on which the reply was filed. The basis for the 2210 days of PTA

credit is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

- iii) The basis for the 306 days of PTA debit under § 1.704(b) is due to the Applicant's failure to reply to actions by the PTO within three months after the date on which the action was mailed, and the Applicant's failure to file a petition to withdraw the holding of abandonment within two months after the date on which the Notice of Abandonment was mailed.
- iv) The total PTA under § 1.703(f) is projected to be 2575 days, which is the total PTA credit for PTO delay of 2881 days less the PTA debit for applicant delay of 306 days.

6. The following statements are required by 37 CFR § 1.705(b)(2)(ii).

- i) The relevant dates as specified in 37 CFR § 1.703(a)(1) for one part of the PTA credit are as follows: the date of August 8, 2002, which is the date that is fourteen months after the date on which the application was filed under 35 USC § 111(a); and the date of July 2, 2004, which is the mailing date of a notification under 35 USC § 121. Thus, the period for this delay runs from August 8, 2002 to July 2, 2004. This period of delay is 694 days. The next relevant date is March 1, 2005, which is the date that is four months after the date on which the applicant filed a reply under 35 USC 132; and the date of June 10, 2009, which is the mailing date of a notification under 35 USC 132. Thus, the period for this delay runs from March 1, 2005 to June 10, 2009. This period of delay is 1562 days. Thus, the total period for delay under 37 CFR § 1.703(a)(1) is 2256 days (i.e., 694 days + 1562 days).
- ii) The relevant dates as specified in 37 CFR § 1.703(b) for the other part of the PTA credit are as follows: the date of June 9, 2004

which is the date one day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a); and the date on which Applicant expects this application to issue, June 28, 2010. Thus, the period of delay runs from June 9, 2004 to June 28, 2010. This period of delay is 2210 days.

- iii) The two periods given in paragraphs 6(i) and 6(ii) overlap for the following periods. The period from June 9, 2004 until the date of July 2, 2004. This period of this overlap is 23 days. And the period from March 1, 2005, until the date of June 10, 2009. This period of overlap is 1562 days. Thus, the total reduction for overlap is 1585 days (i.e., 23 days + 1562 days).

7. The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704.

- i) The Amendment and Response filed November 1, 2004 under 37 CFR § 1.111 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on July 2, 2004, and ends on the date the reply was filed. Thus, the period of delay runs from October 3, 2004 to November 1, 2004. This period of delay is 30 days.
- ii) The petition to withdraw the holding of abandonment filed on January 14, 2009, was filed after the two month period for requesting withdrawal of a holding of abandonment. Under § 1.704(b), the period of adjustment for delay associated with the petition begins on the day after the date that is two months after the

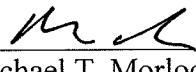
date of mailing of the Notice of Abandonment and ending on the date a petition to withdraw the holding of abandonment was filed. Thus, this period of delay runs from April 14, 2008 and ends on January 14, 2009. This period of delay is 276 days.

8. Any patent granted on this application is not subject to a terminal disclaimer. See 37 CFR § 1.705(b)(2)(iii)

9. Applicant reserves the right to file a supplemental Request for Correction of PTA under 37 CFR § 1.705(d) in the event the patent issues on a date other than June 28, 2010.

Respectfully submitted,

Date: 2/29/2010

  
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Michael T. Morlock  
Reg. No. 62,245

Encl. - Exhibit A - Copy of PTA History for Application No. 09/876,915 Printed from PAIR February 25, 2010

09/876,915	SYSTEMS AND METHODS FOR ADAPTIVE SAMPLING AND ESTIMATING A SYSTEMATIC RELATIONSHIP BETWEEN A PLURALITY OF POINTS	02-25-2010::10:45:55
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## Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/876,915

Filing or 371(c) Date:	06-08-2001	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	2226
USPTO Adjustment(days):	-	Explanation Of Calculations	

## Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
12-01-2009	Mail Notice of Allowance		
11-24-2009	Examiner's Amendment Communication		
11-24-2009	Document Verification		
11-24-2009	Notice of Allowance Data Verification Completed		
09-28-2009	Information Disclosure Statement considered		
09-28-2009	Information Disclosure Statement (IDS) Filed		
09-23-2009	Date Forwarded to Examiner		
09-10-2009	Response after Non-Final Action		
06-10-2009	Mail Non-Final Rejection	1562	
06-08-2009	Non-Final Rejection		↑
06-05-2009	Examiner Interview Summary Record (PTOL - 413)		↑
04-05-2009	Date Forwarded to Examiner		↑
01-14-2009	Response after Non-Final Action		↑
04-06-2009	Mail Notice of Rescinded Abandonment		↑
04-05-2009	Notice of Rescinded Abandonment in TCs		↑
02-06-2009	Mail-Petition Decision - Dismissed		↑
02-06-2009	Petition Decision - Dismissed		↑
01-14-2009	Petition Entered		↑
02-06-2009	Mail-Petition to Revive Application - Granted		↑
02-06-2009	Petition to Revive Application - Granted		↑
01-14-2009	Petition Entered		↑
02-13-2008	Mail Abandonment for Failure to Respond to Office Action		↑
02-11-2008	Aband. for Failure to Respond to O. A.		↑
07-02-2004	Mail Non-Final Rejection		↑
03-19-2007	Non-Final Rejection		↑
03-21-2006	Case Docketed to Examiner in GAU		↑
02-27-2006	IFW TSS Processing by Tech Center Complete		↑
05-10-2005	Correspondence Address Change		↑
02-10-2005	Date Forwarded to Examiner		↑
11-01-2004	Response after Non-Final Action		30
11-01-2004	Request for Extension of Time - Granted		↑
11-01-2004	Workflow incoming amendment IFW		↑

2/25/2010	<a href="https://sportal.uspto.gov/secure/PA_Pe...">https://sportal.uspto.gov/secure/PA_Pe...</a>	Exhibit A
07-02-2004	Mail Non-Final Rejection	694
06-27-2004	Non-Final Rejection	↑
05-27-2004	Case Docketed to Examiner in GAU	↑
08-30-2001	Case Docketed to Examiner in GAU	↑
08-20-2001	Transfer Inquiry	↑
08-08-2001	Application Dispatched from OIPE	↑
08-07-2001	Correspondence Address Change	↑
06-18-2001	IFW Scan & PACR Auto Security Review	↑
06-08-2001	Initial Exam Team nn	↑

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